COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 214 (S/S) OF 2003
(Old No. 5590 (S/S) of 1995)

1. State of Uttar Pradesh through the
   Secretary, Food & Civil Supplies
   Department, Civil Secretariat, Lucknow.
2. The Regional Food Controller, Kumaon
   Region, Haldwani, District Nainital.

..... Petitioners

Versus

1.Shri Dulap Singh alias Dalip Singh,
  S/o Shri Jagat Singh, R/o Village Talli
  Bhatyura, P.O. Jainti, District Almora.
2.The State Public Services Tribunal, U.P.
  Indira Bhawan, Lucknow

..... Respondents

Shri Bhupendra Singh, learned standing counsel for the petitioners.
Shri Vinod Tewari, learned counsel for the respondent No.1.

Dated: 09.06.2005

Hon'ble P.C. Verma, J.
Hon'ble J.C.S. Rawat, J.

This writ petition has been filed by the petitioner- State of Uttar Pradesh, now State of Uttaranchal, substituted in place of Uttar Pradesh by virtue of U.P. Reorganization Act, 2000 challenging the judgment and order dated 24.05.1995 passed by Public Services Tribunal, Uttar Pradesh, Lucknow in Claim Petition No.416/f/iv/1984 – Daleep Singh Vs. State of U.P. & another, whereby the learned Tribunal quashed the termination order of the respondent No.1 dated 04.1.1984 and allowed the claim petition partly.

2. The respondent No. 1-claimant of the claim petition challenged the termination order dated

04.01.1984 by which the services of the Respondent No.1 were terminated.

3. As per the facts noticed by the Tribunal, the respondent No.1 was appointed as temporary Peon by the petitioner No.2-Regional Food Controller, Kumaon Region on 20.05.1973 and his services were terminated on 29.12.1973. The respondent No.1 was again appointed as a temporary Chowkidar by the same authority on 24.04.1975 and his services were again terminated on 15.07.1975. Thereafter, he was again appointed as temporary Chaukidar on 18.07.1975 and continued the work till 04.1.1984 and his services were again terminated on 04.01.1984.

4. By order dated 04.01.1984, the services of the respondent No.1 were terminated and the same was challenged before the Tribunal on the ground that the order was punitive in nature and the services of respondent No.1 were terminated without affording any opportunity of hearing. After the termination order dated 04.01.1984, the respondent No.1 was reappointed on 31.01.1984 and his services were again terminated on 31.07.1984. In the third paragraph of the prayer clause made in the claim petition, the respondent No.1 has also prayed to quash the order-dated 27.07.1984. After relying on the judgments of **Rajendra Singh Vs. State of U.P. and others** reported in **LCD 1991 (9) page 483** and **S.K. Raman Vs. The Management of Kundah Rural Cooperative Agricultural Society Ltd.** reported in **ILLJ Madras 1987 page 48,** the learned Tribunal held that the order of termination was punitive and the same was passed without giving any opportunity of hearing to the

claimant. The learned Tribunal also relied on the judgment of **Nepal Singh Vs. State of U.P.** reported in **LCD 1983(3) page 345** whereby it was observed by the Hon'ble Supreme Court that if the services are terminated by a simplicitor order on the ground of corrupt behavior, the same will be violative of Article 311(2) of Constitution of India. Therefore, the Tribunal after relying on the aforesaid judgments set aside the termination order of respondent No.1 dated 04.01.1984.

5. A perusal of the judgment of the Tribunal shows that the defence set up by the respondent No.1 that the order of termination of respondent No.1 was a simplicitor order and the same was based on the overall assessment and work and conduct of the respondent No.1.

6. When the respondent No.1 was re-appointed for a fixed period on 31.3.1984, he admitted his guilt before the higher authority and gave assurances to improve himself. Therefore, his services were again terminated on 31.07.1984. The learned Tribunal has held that the termination order dated 04.01.1984 was punitive in nature. The tribunal did not advert to the nature of the termination order dated 31.07.1984 whether the order passed was punitive or it was passed simplicitor on the overall assessment and work and conduct of the respondent No.1 The learned Tribunal fell into error in not considering the fact that after the appointment dated 31.03.1984, the termination order dated 04.01.1984 lost its significance and the respondent No.1 was re-appointed.

7. The learned Tribunal ought to have dealt with the nature of the termination order dated 31.07.1984 but

the Tribunal has simply stated that there will be no effect of re-appointment of the respondent No.1 on 31.03.1984 as the termination order dated 04.01.1984 was punitive in nature. As observed by the Tribunal, the order dated 04.01.1984 became ineffective once the respondent No.1 was re-appointed on 31.03.1984.

8. The respondent No.1 was appointed as a temporary peon on 20.5.1973 and his services were terminated on 20.12.1973. The order of termination is a simplicitor order and it does not carry the stigma on the respondent No.1, as such, the order is valid in the eye of law. The petitioner/respondent No.1 has further alleged in his petition before the Public Service Tribunal that he was re-appointed as a temporary Chowkidar, Rabi Purchase, Bazpur on 24.4.1975 and his services were terminated on 15.7.1975. The State has admitted this fact in his written statement. A perusal of the pleadings as well as the documents reveals that his re-appointment against the temporary post was only for the Rabi Purchase i.e. for a fixed term as such his termination does not carry any stigma on his services. The respondent No.1 was again appointed as temporary Chowkidar on 18.7.1975. His appointment order clearly reveals that he was appointed purely on the temporary post. The State has admitted his appointment and stated that he was appointed temporarily and his services can be terminated at any time without any notice and his services were again terminated on 04.1.1984. The order Annexure No.6, contained with the petition filed by the petitioner-Dulap Singh (respondent No.1) before the Public Service Tribunal, reveals that the report of the Area Accounts Officer has been made the basis of his termination. The

report of the officer concerned reveals that he was found in drunken condition in the office and he tried to break the doors of the office and it is further alleged that he has created bad atmosphere in the office. Thereafter his services were terminated. He was working on a temporary post and it is also revealed from the record that the respondent No.1 gave an affidavit again to the Area Food Controller that he had committed the mischief in the office and it was done due to the mental tension and he submitted his apology. As such the admission of the applicant reveals that his conduct was not satisfactory. The respondent No.1 was again re-appointed on the post of Chowkidar-cum-Palledar temporarily and he was appointed for a fixed period from 31.3.1984 to 31.7.1984. The order of the appointing authority has been annexed as Annexure No.8 to the writ petition. The order itself reveals that on 31.7.1984 his services shall stand terminated. The services of the respondent No.1 were either temporary or for a fixed period. The order of termination does not create any stigma.

9. The Hon'ble Supreme Court in the case **State of Punjab and others versus Sukhwinder Singh,** reported in **2005 AIR SCW, page 3477** in Para 10 relied upon the case ***State of Uttar Pradesh and another versus Kaushal Kishore Shukla [(1991)] 1 SCC 691*** observed that in the said case employee Kaushal Kishore Shukla was appointed on *ad hoc* basis for fixed period on 18.2.1977 as Assistant Auditor, which was extended on several occasions and the last extension was granted on 21.1.1980 which was to expire on 28.2.1981. His services were terminated on 23.9.1980. The termination order was

challenged on the ground that certain allegations of misconduct had been made against him regarding which an *ex parte* inquiry was held wherein he was not given any opportunity of hearing. These allegations were also referred to in the counter-affidavit, which was filed on behalf the State before the High Court. It was submitted that the order of termination of service was founded on the allegations of misconduct and the *ex parte* inquiry report. The High Court accepted the plea of the employee and quashed the termination order. The appeal filed by the State was allowed by this Court and the order of the High Court was set aside with the following observations:-

> *"The respondent being a temporary Government servant had no right to hold the post, and the competent authority terminated his service by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorized audit of Boys Fund was held, does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent, instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules. The allegations made against the respondent contained sin the counter affidavit by way of defence filed on behalf of the appellants also do not change the nature and character of the order of termination."*

In Para 11 of the judgment after relying on the case ***S.P. Vasudeva versus State of Haryana and others [AIR 1975 SC 2292]*** the Hon'ble Supreme Court observed that in the said case it was held that where an order of reversion of a person who had no right to the post, does not show *ex facie* that he was being reverted as a measure of punishment or does not cast any stigma on him, the Courts will not normally go behind that order to see if there were any motivating factors behind that order. In **Bishan Lal Gupta v. State of Haryana and others, AIR 1978 SC 363,** it was held where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service of the probationer and the probationer was given ample opportunity to answer in writing whatever was alleged against him in show cause notices, the innocuous order of termination following such summary inquiry could not be said to be an order of punishment which entitled him to a full-fledged inquiry contemplated by Article 311 of the Constitution. In ***Oil and Natural Gas Commission v. Dr. Md. S. Iskander Ali, AIR 1980 SC 1242,*** it was held as under:-

> *"Where the short history of the service of the probationer appointed in a temporary post clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was stated, it was not proceeded with and no punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it would not be said that the order of termination attracted the provisions of Article 311,*

when the appointing authority had the right to terminate the service without assigning any reasons."

In Para 12, the Hon'ble Supreme Court observed that the same question was considered in considerable detail in *State* ***of Maharashtra v. Veerappa R. Saboji, AIR 1980 SC 42,*** in which it was observed as under:-

> *"Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and finds whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order."*

The Apex Court in the same paragraph further observed that in ***Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr.Pandfurang Godwalkar and another, AIR 1993 SC 392*** the same principle was reiterated and it was held that where the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simplicitor after some preliminary enquiry it cannot be held that as some enquiry had been made against him before issuance of order of termination it really amounted to his removal from service on a charge, as such penal in nature.

In Para 13, the Apex Court observed that in ***Ravindra Kumar Mishra v. U.P. State Handloom Corporation Ltd. and another, AIR 1987 SC 2408,*** the appellant had been appointed on 30.10.1976 and had got

two promotions while still working in temporary status and by 1982 he had been working as Deputy Production Manager. On 22.11.1982 he was placed under suspension and the suspension order recited that as a result of preliminary inquiries made by the Central Manager it had come to notice that the appellant was responsible for misconduct, dereliction of duty, mismanagement and showing fictitious production of terrycot cloth. The suspension order was revoked on 1.2.1983 and thereafter on 10.2.1983 a simple order terminating his services was passed reciting that his services were no more required and his service would be deemed to be terminated from the date of receipt of the notice. It was further mentioned therein that he would be entitled to receive one month's salary in lieu of notice period. The termination order was challenged by the appellant on the ground that the same was punitive in nature, which was also demonstrated from the fact that shortly before the order of termination a suspension order had been passed wherein a specific charge of misconduct against him was mentioned. After referring to several earlier decisions this Court repelled the challenge made by the employee by observing as under in paragraph 6 of the report:-

> *".....In several authoritative pronouncements of this Court, the concept of 'motive' and 'foundation' has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary services taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be*

necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary, merely because the appropriate authority proceeds to make an assessment and leaves a record of its views, the same would snot be available to be utilized to make the order of termination following such assessment, punitive in character."

Lastly, the Apex Court in Para 14 of the said judgment after relying in **Krishnadevaraya Education Trust and another v. L.A. Balarsina, (2001)9 SCC 319,** observed that it was held in the said case that a probationer is on test and if his services are found not be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services. The mere fact that in response to the challenge the employer states that the services were not satisfactory, would not ipso facto mean that the services of the probationer were terminated by way of punishment.

10. In view of law laid down by the Apex Court in **State of Punjab and others versus Sukhwinder Singh's case** (supra) the order-dated 31.07.1984 terminating the services of the respondent No.1 was simplicitor in nature and the Tribunal committed illegality quashing the termination order. Therefore, the writ petition is allowed. The impugned judgment and order dated 24.05.1995 is set aside. The termination order dated 31.07.1984 is upheld. No order as to costs.

(J.C.S. Rawat,J.) **(P.C. Verma,J.)**

09.6.2005

P.Singh